

APPEAL NO. 152331
FILED FEBRUARY 4, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 26, 2015, in Lufkin, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the Texas Department of Insurance, Division of Workers' Compensation (Division) does not have jurisdiction at the time of the CCH to adjudicate the issues of maximum medical improvement (MMI) and impairment rating (IR); (2) the appellant (claimant) had disability resulting from the compensable injury beginning on August 17, 2012, and continuing through August 27, 2012; and again beginning on April 2, 2015, and continuing through the date of the CCH; and (3) income benefits for the compensable injury began to accrue on August 24, 2012.

The claimant appealed the hearing officer's determinations regarding jurisdiction to determine MMI/IR; that the claimant had disability in August 2012; and that income benefits began to accrue on August 24, 2012.

The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

That portion of the hearing officer's determination that the claimant had disability beginning on April 2, 2015, and continuing through the date of the CCH was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury); that the carrier has accepted as compensable a lumbar sprain/strain; and that the Division has determined that the compensable injury extends to a disc bulge/herniation at L4-5.

The claimant sustained a compensable low back injury on (date of injury). Following a previous CCH, a Division hearing officer issued a decision dated November 20, 2014, determining that the compensable injury included a disc bulge/herniation at L4-5; that the claimant had not reached MMI and that no IR could be assigned. The decision of the hearing officer became the final decision of the Appeals Panel pursuant

to Section 410.204(c) and the carrier appealed such decision to the district court where it is pending trial pursuant to Section 410.251 et seq.

JURISDICTION

Section 410.205(b) provides that a decision of the Appeals Panel is binding during the pendency of an appeal under Subchapter F or G of the 1989 Act (pertaining to judicial review). Section 410.207 provides that during judicial review of an Appeals Panel decision, the Division retains jurisdiction of all other issues related to the claim. See Appeals Panel Decision 001126, decided June 30, 2000.

Because the carrier sought judicial review of the decision dated November 20, 2014, on the issues of MMI and IR, we affirm the hearing officer's decision that the Division did not have jurisdiction at the time of the CCH on October 26, 2015, to determine the issues of MMI and IR.

DATE OF ACCRUAL OF INCOME BENEFITS

The hearing officer's determination that income benefits for the compensable injury began to accrue on August 24, 2012, is supported by sufficient evidence and is affirmed.

DISABILITY

It is not disputed that the claimant took vacation time and did not work from August 17, 2012, the day following the injury, until August 27, 2012, when he returned to work with restrictions at wages equivalent to his pre-injury wage. The evidence reflects that the claimant continued working after August 27, 2012, with no loss of income, until he was taken off work by his physician on April 2, 2015.

That portion of the hearing officer's determination that the claimant had disability beginning on August 17, 2012, is supported by sufficient evidence; however, in Finding of Fact No. 7, the hearing officer determined that as a result of the compensable injury the claimant was unable to obtain and retain employment at wages equivalent to his pre-injury wage from August 17, 2012, through August 27, 2012, and again from April 2, 2015, through the date of the CCH. In Conclusion of Law No. 4 and the Decision, the hearing officer determined that the claimant had disability beginning on August 17, 2012, and continuing through August 27, 2012, and again beginning on April 2, 2015, and continuing through the date of the CCH. Since it is not disputed that the claimant worked and had no lost wages on August 27, 2012, the hearing officer's Finding of Fact No. 7, Conclusion of Law No. 4, and decision concerning disability on such date are so against the great weight and preponderance of the evidence as to be clearly wrong and

manifestly unjust. Therefore, we reverse and render a new decision that the claimant had disability resulting from the compensable injury beginning on August 17, 2012, and continuing through August 26, 2012.

SUMMARY

We affirm the hearing officer's determination that the Division did not have jurisdiction at the time of the CCH on October 26, 2015, to determine the issues of MMI and IR.

We affirm the hearing officer's determination that income benefits for the compensable injury began to accrue on August 24, 2012.

We reverse that portion of the hearing officer's disability determination that the claimant had disability beginning on August 17, 2012, and continuing through August 27, 2012, and render a new decision that the claimant had disability resulting from the compensable injury beginning on August 17, 2012, and continuing through August 26, 2012.

The true corporate name of the insurance carrier is **PENNSYLVANIA MANUFACTURERS ASSOCIATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge